



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November , 2017

3020 COLEMAN CREEK, LLC
c/o TOMAS PALM
PO BOX 2767
WIMBERLEY, TX 78676

SUBJECT: Water Right Transfer Application T-12577

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12577. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Medford Mail Tribune newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. **The protest period will end 30 days after the last date of newspaper publication.**

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0814 or Jessica.L.Joye@oregon.gov, if I may be of assistance.

Sincerely,

Jessica Joye

Reimbursement Authority Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application T-12577
Shavon Haynes, District 13 Watermaster (via e-mail)
Jeffrey Kee, Agent for the applicant (via e-mail)

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

| | | |
|---------------------------------------|---|------------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-12577, Jackson County |) | PROPOSING APPROVAL OF A |
| |) | CHANGE IN CHARACTER OF USE |
| |) | AND A CHANGE IN PLACE OF USE |

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

TOMAS PALM
3020 COLEMAN CR
MEDFORD, OR 97051

Findings of Fact

1. On January 25, 2017, TOMAS PALM filed an application to change the place of use and change the character of use under Certificates 64369 and 64370. The Department assigned the application number T-12577.
2. Notice of the application for transfer was published on April 18, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 20, 2017, the Department notified the applicant's agent that the Land Use Information Form submitted was not completed on the proper Department form.
4. On July 19, 2017, the applicant's agent submitted a completed Land Use Information Form.
5. On August 7, 2017, the Department notified the applicant's agent of several deficiencies in the transfer application and map that needed to be resolved prior to issuance of a draft preliminary determination. The agent submitted a revised application, map, and evidence of use form on August 7, 2017.
6. On August 8, 2017, the Department contacted the applicant's agent regarding clarification of the revised application, map, and evidence of use affidavit submitted on August 7, 2017.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

7. On August 10, 2017, the Department received a revised application and map.
8. On August 16, 2017, the Department contacted the applicant's agent in regards to a discrepancy with the revised application and map submitted on August 10, 2017, more specifically related to Table 2 of the application for Certificate 64370 and the application map.
9. On August 21, 2017, the Department received a revised application map and an amended Evidence of Use Affidavit.
10. On August 22, 2017, the Department contacted the applicant's agent in regards to the map received on August 21, 2017. The map was not signed by a Certified Water Right Examiner.
11. On August 28, 2017, the Department received a revised map.
12. On October 27, 2017, the Applicant submitted a revised signature page of the application requesting to change the name listed on the application to 3020 Coleman Creek, LLC, in which Tomas Palm, is the authorized agent and owner.
13. On October 26, 2017 the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12577 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 27, 2017, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
14. The portion of the first right to be transferred is as follows:

Certificate: 64369 in the name of CRYSTAL SPRINGS PACKING COMPANY, INC. (perfected under Permit R-8437)

Use: FROST PROTECTION

Priority Date: FEBRUARY 17, 1982

Quantity: 1.09 ACRE-FEET (AF), BEING 0.66 AF IN BLACK OAK NORTH RESERVOIR AND 0.43 AF IN BLACK OAK SOUTH RESERVOIR

Source: AN UNNAMED STREAM WITH ANY DEFICIENCY IN SUPPLY FROM HILL CREEK, AND EMIGRANT CREEK VIA THE TALENT IRRIGATION DISTRICT CANAL, IN BLACK OAK NORTH AND BLACK OAK SOUTH RESERVOIRS

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | DLC |
|------|-----|-----|-----|-------|-----|
| 38 S | 1 W | WM | 8 | NW SE | 45 |

15. Certificate 64369 does not describe the location of the points of diversion, however, information is available from the applicant and the secondary water right Certificate 64370, indicating that the points of diversion are located as follows:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|--|
| 38 S | 1 W | WM | 8 | NW SE | 45 | BLACK OAK NORTH RESERVOIR - 2200 FEET NORTH AND 1450 FEET WEST FROM THE SE CORNER OF SECTION 8 |
| 38 S | 1 W | WM | 8 | NW SE | 45 | BLACK OAK SOUTH RESERVOIR - 1790 FEET NORTH AND 1430 FEET WEST FROM THE SE CORNER OF SECTION 8 |

16. Transfer Application T-12577 proposes to change the character of use to Multiple Purpose.
17. Certificate 64369 does not specify the season of use. However, the Rogue Basin Program establishes the storage season for the area as November 1 through March 30.
18. The portion of the second right to be transferred is as follows:

Certificate: 64370 in the name of CRYSTAL SPRING PACKING COMPANY, INC.
(perfected under Permit S-46742)

Use: FROST PROTECTION ON 8.72 ACRES

Priority Date: FEBRUARY 17, 1982

Quantity: 1.09 ACRE-FEET OF STORED WATER ONLY

Sources: BLACK OAK NORTH AND BLACK OAK SOUTH RESERVOIRS

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|--|
| 38 S | 1 W | WM | 8 | NW SE | 45 | BLACK OAK NORTH RESERVOIR - 2200 FEET NORTH AND 1450 FEET WEST FROM THE SE CORNER OF SECTION 8 |
| 38 S | 1 W | WM | 8 | NW SE | 45 | BLACK OAK SOUTH RESERVOIR - 1790 FEET NORTH AND 1430 FEET WEST FROM THE SE CORNER OF SECTION 8 |

Authorized Place of Use:

| FROST PROTECTION | | | | | | | |
|------------------|-----|-----|-----|-------|-----|-------|---------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres | Change |
| 38 S | 1 W | WM | 8 | NE SE | 45 | 0.55 | POU/USE |
| 38 S | 1 W | WM | 8 | NE SE | 45 | 3.45 | USE |
| 38 S | 1 W | WM | 8 | NW SE | 45 | 0.47 | POU/USE |
| 38 S | 1 W | WM | 8 | NW SE | 45 | 4.25 | USE |
| TOTAL | | | | | | 8.72 | |

19. Transfer Application T-12577 proposes to change the character of use to Nursery Use.
20. Transfer Application T-12577 proposes to change the place of use of the right to:

| NURSERY USE | | | | | | |
|-------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 38 S | 1 W | WM | 8 | NE SE | 45 | 0.47 |
| 38 S | 1 W | WM | 8 | NW SE | 45 | 0.55 |
| TOTAL | | | | | | 1.02 |

21. Certificate 64370 does not specify the season of use for frost protection. However, the Rogue Basin Program establishes the season for frost protection as year round.

Transfer Review Criteria [OAR 690-380-4010(2)]

22. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

23. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12577.

24. The proposed changes, as conditioned, would not result in enlargement of the rights.

25. The proposed changes, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action

The changes in character of use and place of use proposed in Transfer Application T-12577 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12577 is approved, the final order will include the following:

1. *The changes in character of use and place of use proposed in Transfer Application T-12577 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 64369, 64370, and any related decree.*
3. *Water right Certificates 64369 and 64370 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
4. *The proposed nursery use shall be limited such that:*
 - a) *The amount of water used for NURSERY OPERATIONS is limited to a diversion of 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre per year.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre per year.*
 - c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre per year.*

d) *For the irrigation of any other crop, the amount of water diverted is limited to 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre during the irrigation season of each year.*

5. *Water use measurement conditions:*

a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.*

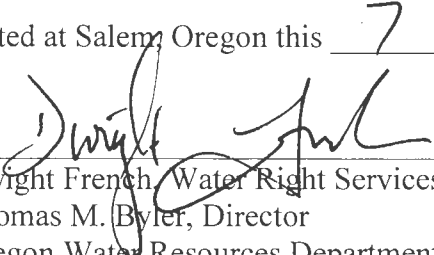
b. *The water user shall maintain the meter or measuring devices in good working order.*

c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 7 day of November, 2017.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Jessica Joye. If you have questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@oregon.gov

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>